Supreme Court, U.S.
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(1)

No.

In The

Supreme Court of the United States

October Term, 1993

Say & Say, et al.,
Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE,
Respondent,

Eric Lindquist, et al., and
Jesse D. Miller, et al.,
Real Parties In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

A. As a matter of constitutional rights, whether the California Superior Court and the California Court of Appeal's consistent dismissals of all of petitioners' lawyers' new lawsuits, writ petitions and appeals deprive Petitioners' of their civil rights, rights, privileges, or immunities secured by the Constitution and laws of the United States of America and the State of California.

1. Whether the conduct of Justices of the Court of Appeal violated 42 U. S. C. §§1983, and 1988, and other civil rights law because of Petitioner Shieh's color, race, national origin, religion, and language and cultural background.

2. Whether the Court of Appeal and the trial court "were being used to harass and injure [Petitioner Shieh], either because the state courts were powerless to stop the deprivation or were in league with those [rich, large, and influential law firms which] were bent upon abrogation of federally protected rights". (Emphasis added.) Pulliam v. Allen, (1984) 466 U.S. 522, 104 S. Ct. 1970, 1980.

B. Whether the Court of Appeal shall grant Caucasian litigants license to commit assault, battery, breach of the peace, and lawsuits against Petitioner Shieh and his family members in violation of the Constitution and laws of the United States of America and the State of California.

C. Whether the pre-denial order deprived Petitioner Shieh of a right, privilege or immunity guaranteed by the Constitution and laws of the United States of America and the State of California.

D. Whether the more than $ 1.05 million security for in propria persona Defendants alleged in propria persona attorneys' fees violate the constitution and laws of the United States of America and the State of California.

1. The in propria persona defendant/plaintiff is not entitled to attorneys' fees. CCP § 1033.5(a)(10). Kay v. Ehrler, 111 S.Ct. 1435, 499 U.S. 432, 113 L.Ed.2d. 486 (1991).

2. CCP § 391 is unconstitutional as it failed to set up the maximum security of $ 50,000.00 in accordance with the California Corporations Code § 800 (d).

ALL PARTIES TO THE PROCEEDING

PLAINTIFFS AND PETITIONERS:

SAY & SAY, a California corporation and LIANG-HOUH SHIEH, an individual, and JAMES L. ANDION, counsel for Plaintiffs and Petitioners.

DEFENDANTS AND RESPONDENTS (Real Party in Interest):

1. In Eric Lindquist, et al. case:

LEWIS, D'AMATO, BRISBOIS AND BISGAARD ("LDBB") AND ITS GENERAL PARTNERS.

2. In Jesse D. Miller, et al. case:

FULBRIGHT AND JAWORSKI ("FJ") AND ITS GENERAL PARTNERS.

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Real Parties In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

To the Honorable William Rehnquist, the Chief Justice, and Associate Justices of the Supreme Court of the United States.

This petition consolidates two

separate lawsuits presenting the same legal issues for this Court's review. Say & Say, a California corporation ("Company") and L. Shieh, an individual, the petitioners herein, pray that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of California entered in the above-entitled cases on September 15, 1993.

I. OPINION BELOW

The opinions of the Supreme Court of California dated September 15, 1993, respectively, which denied the petition for review are unreported and are attached hereto as petitioners' Appendix A. The judgment of the California Court of Appeal dated July 22, 1993, in the Miller case, which denied petitioners' petition for a writ of mandate

/prohibition, is attached hereto as petitioners' Appendix B. The Minute Orders entered by the Orange County Superior Court on July 7, 1993 and on July 14, 1993, in the Miller case which dismissed petitioners' Complaint with prejudice pursuant to "pre-filing order" under California Code of Civil Procedure ("CCP") § 391.7 (vexatious litigant statute), is attached hereto as petitioners' Appendix C. The judgment of the California Court of Appeal dated September 17, 1993, in the Lindquist case which dismissed petitioners' appeal is attached hereto as petitioners' Appendix D. The judgment of the California Court of Appeal dated August 12, 1993, in the Lindquist case which denied petitioners' petition for writ of mandate/prohibition is attached hereto as petitioner's Appendix E. The Minute Order enter by the Orange County

Superior Court on July 21, 1993, in Lindquist case which dismissed petitioners' Complaint with prejudice pursuant to the "pre-filing order" under CCP § 391.7, is attached hereto as petitioners' Appendix F.

II. JURISDICTION

The judgments of the Supreme Court of California (Appendix A) were entered on September 15, 1993, respectively, which denied Petitioners' petition for review in both cases involving similar constitutional issues. Under 28 U.S.C. § 1257(a), 28 U.S.C. § 1651(a) and Supreme Court Rule 10.1(c), this Court will review a state court judgment by writ of certiorari, if "a state court ... has decided an important question of federal law which has not been, but should be, settled by this court, or has

decided a federal question in a way that conflicts with applicable decisions of this court."

III. FEDERAL LAWS INVOLVED

A. The California Vexatious Litigant Statute (CCP § 391 et seq.) is unconstitutionally vague, uncertain, and overbraod. It gives the state court judge unlimited power to deny an in pro per litigant's right to the court and the right of equal protection by the state court.

B. The pre-filing order under CCP § 391.7 is unconstitutional in that it amounts to an automatic pre-denial order to the in pro per litigant and permanently deprives a pro per litigant's rights of equal protection and due process.

C. In this particular case, the expansive imposition of a CCP § 391.7 pre-filing/pre-denial order to cover plaintiffs' counsel is unconstitutional in that it deviates from the clear and plain language of CCP § 391.7, and that it results in the extremely chilling effect of completely denying the protection of plaintiffs' life, liberty and property right by the state court.

D. The retroactive application of the pre-filing/pre-denial order to automatically dismiss all of plaintiffs' pending lawsuits, writ petitions and appeals is unconstitutional because it violates the plaintiffs' rights of due process and equal protection.

IV. NATURE OF THE CASE AND

PROCEDURAL HISTORY[1]

A. The Trial Court

1. Petitioner Shieh was born in the Republic of China ("China"). The Law Firm of Graham & James ("GJ") forced Petitioner Shieh to commit unethical and illegal misconduct. When Petitioner Shieh refused, GJ terminated his employment. Petitioner Shieh then became a general partner at Fulbright & Jaworski ("FJ"). GJ and FJ forced Petitioner Shieh to dismiss the lawsuit against GJ with prejudice and then terminated Petitioner Shieh's

[1] Dr. Shieh is the first and the only one, who has always been represented by other attorneys in all cases at all relevant times, yet who was declared a VL and all of his lawyers are subject to pre-filing order. The pre-filing order is, in essence and in practical effect, a denial of all lawsuits, writs and appeals, including those filed before the effective date of the Pre-denial order.

partnership without the knowledge and consent of more than 260 general partners of FJ. An Action was brought by Petitioner Shieh's lawyer against Ebershoff (FJ's partner) et al., in the federal court entitled Shieh v. Ebershoff, et al., Lower Court Docket No. CV-91-5466-WJR(Ex), Appeals 93-55327, et al. ("Ebershoff Federal").

2. On or about July 31, 1992, the Law Office of Richard Hopkins filed the action L. Shieh v. Ebershoff, et al. in the California Superior Court for the Los Angeles County, case No. BC 061170 ("Ebershoff II"), after the federal court declined to exercise jurisdiction over the state claims.

3. On or about November 11, 1992, in order to avoid the confusion created by Defendants in this Action,

the Law Office of Richard Hopkins and Petitioner Shieh executed the substitution of attorney before anyone in the world ever declared Petitioner Shieh a vexatious litigant and before the summons and complaint in this Action were served upon Defendants in December, 1992. Subsequently, the Law Office of Donald Miller, the Law Office of Guy Rollins, the Law Office of James L. Andion and the Law Office Lawrence B. Yang became Petitioners' additional attorneys in this Action. Petitioner Shieh has never been in pro per, and has never seen any judges in the trial court and any justices in the Court of Appeal.

4. Defendants' application to be exempted from paying "general appearance fees" was denied by the trial court. To date, the Defendants still refused to pay the pay appearance fees after

entering their general appearance.

5. On or about February 18, 1993, the trial court mistakenly declared Petitioner Shieh a vexatious litigant and requested Petitioner Shieh to post more than $ 1.05 million security to secure the in propria persona Defendants' alleged in propria persona attorney's fees.

6. On or about March 4, 1993, before the vexatious litigant order became final and effective, plaintiffs' counsel Law Office of Guy Rollins filed the action Say & Say,et al. v. Eric Lindquist, et al., in the Orange County Superior Court, case No. 706438 (the "Lindquist" case), against LDBB and its general partners. On or about March 30, 1993, the law office of Guy Rollins filed the action Say & Say, et al. v.

Jesse Miller, et al., in the Orange County Superior Court, case No. 707971 (the "Miller" case), against FJ and its general partners.

7. Defendants in these two actions are rich, powerful and influential law firms. They have manipulated the entire state court's decision. Petitioner Shieh was deprived of the right to access the court, right to counsel, and right to jury trial. This Action was dismissed by the state court for inability to post more than $ 1.05 million security for in propria persona Defendants.

8. On August 12, 1993, Justice Spencer of Division One of the California Court of Appeal for the Second Appellate District issued a published order declaring plaintiff

Shieh a vexatious litigant and prohibited plaintiffs' current and future counsels from filing any lawsuits, writ petitions and appeals in the state courts. In Re Liang-Houh Shieh, 17 Cal. App. 4th 1154, 21 Cal. rptr. 2d 886 (1993). Besides, Justice Spencer further ordered or instructed that all of plaintiff Shieh's pending cases in any state court be automatically dismissed with prejudice.

9. As a proximate result of the said VL orders, the Orange County Superior Court dismissed the Miller case on July 7, 1993, and the Lindquist case on July 21, 1993, respectively.

10. Petitioners filed petitions for writ of mandate/prohibition with the California Court of Appeal for the Fourth Appellate District in the two

within actions. However, both petitions were denied on July 22, 1993, and August 12, 1993, respectively.

11. Petitioners filed separate petitions for review to the California Supreme Court. However, the California Supreme Court summarily denied said petitions on September 15, 1993.

B. The Consequence of the Pre-denial Order

The consequences of the mistaken declaration of Petitioner Shieh as a vexatious litigant and the pre-filing/pre-denial order are: (1) Caucasian lawyer Gary Hollingsworth committed assault and battery against Petitioner Shieh on or about June 9, 1993. Because of the pre-denial order,

Petitioner Shieh's lawyer's request for the pre-filing permission was ignored and he was not allowed to file a cross-complaint against Hollingsworth in Hollingsworth v. Shieh. (2) Caucasian lawyers, Defendants in this Action, Peter Mason, David Eisen and D. Jay Ritt, committed assault and breach of peace against Petitioner Shieh, his one-year old baby and his family member on May 25, 1993, and June 9, 1993. The pre-denial order has prevented Petitioner Shieh's lawyer from taking action against these defendants. (3) All of Petitioner Shieh's lawyers' complaints, cross-complaints, and appeals were automatically dismissed when filed with requests for pre-filing permission. (4) The California court has closed its door completely, absolutely, and permanently. The California court gave license to Caucasian litigants to

beat and kill Petitioner Shieh in violation of his life, liberty and property rights, and to file endless lawsuits against Petitioner Shieh.

WHY THE PETITION SHOULD BE GRANTED

California court's discrimination and hatred against a minority litigant has resulted in it being in league with large Caucasian law firms to deprive Petitioner Shieh of his fundamental rights by denying all of Petitioner Shieh's lawyer's petitions. The California Supreme Court does not care about the severe consequences. The question for the United States Supreme Court in this Petition is: Will the serious conflicts be unresolved between Division One's decisions and other districts' decisions, and between

Division One's decisions and the constitutions and laws of the State of California[2] and the United States of America?

LEGAL DISCUSSION

I. WHETHER THE TRIAL COURT'S AUTOMATIC AND CONSISTENT DISMISSALS OF PETITIONERS' TWO NEW LAWSUITS DEPRIVE PETITIONER SHIEH OF HIS CIVIL RIGHTS, RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA.

A. Whether the Conduct of Judges of the Trial Court Violated 42 U. S. C.

[2] There are serious conflicts between the holdings of 2nd Dist. which rewrote the law and the constitution, and the holdings in Camerado of 3rd Dist., which followed the "plain language" of §§ 391 (b), 391.2 and 391.7.

§§1983, and 1988, And Other Civil Rights Law Because of Petitioner Shieh's Color, Race, National Origin, Religion, And Language And Cultural Background.

All new lawsuits filed by Petitioner's lawyers were automatically dismissed without proper notice and without hearing by the trial court. Before the filing of this Petition, Justice Spencer issued another OSC Re: Dismissal of Appeals and Imposition of Sanctions in the Castellano case in retaliation against Petitioner and his counsel to place a chilling effect or an absolute prohibition on Petitioners' constitutional rights.

The pre-denial order violates the standards set forth in Long v. Hennessey, 192 F.2d 1144 (1990), because, "(1) the record does not show

that [plaintiffs were] provided with an opportunity to oppose the order before it was entered; (2) the district court [here, California Superior Court and California Court of Appeal] did not create an adequate record for review; (3) the district court [here, California Superior Court and California Court of Appeal] failed to make a substantive finding as to the frivolous or harassing nature of De Long's [here, plaintiffs'] actions; and (4) the district court's order was overly broad."

More importantly, the orders and judgments of the trial court have specifically infringed Petitioner's fundamental rights as guaranteed by the U.S. constitution, by the 42 U. S. C. §§ 1983, and 1988 and by the federal law, and that the conduct, intent and motives of the Justices in Court of Appeal

unconstitutionally and illegally discriminate and retaliate against Petitioner on the basis of his race, color, national origin, religion, etc.

B. Whether the Trial Court and the Court of Appeal "Were Being Used To Harass And Injure [Petitioner Shieh], Either Because the State Courts Were Powerless To Stop Deprivation Or Were In League With Those [Rich, Large, And Influential Law Firms Which] Were Bent Upon Abrogation of Federally Protected Rights". (Emphasis Added.) Pulliam v. Allen, (1984) 466 U.S. 522, 104 S. Ct. 1970, 1980.

In Mitchum v. Foster, 407 U.S. 225, 240, 92 S. Ct. 2151, 2161 (1972), this Court stated that "state courts were being used to harass and injure individuals, either because the state

courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights". (Emphasis added.) This is precisely the case here. The trial court and the Court of Appeal were or are being used by large, rich and influential law firms to harass and injure Petitioner Shieh, and were or are in league with such law firms which were or are bent upon abrogation of federally protected rights.

The Judges/Justices in the trial court and the Court of Appeal knowingly, intentionally and maliciously disregarded the clear and plain language of the federal law and the U.S. Constitution, and created totally false and outrageous stories without any facts and evidence, to justify their unconstitutional (1) declaration of

Shieh as a VL, (2) pre-denial orders and (3) excessive security (more than $ 1.05 million bond). The judgments of the trial court and the Court of Appeal against Petitioner are a total and permanent deprivation of Petitioner's right to counsel, right to sue, and his fundamental right of access to the court, as well as totally and permanently silencing Petitioner's voices in asserting his First Amendment Rights to defend himself or to support his causes of action.

II. WHETHER THE TRIAL COURT AND THE COURT OF APPEAL SHALL GRANT CAUCASIAN LITIGANTS LICENSE TO COMMIT ASSAULT, BATTERY AND BREACH OF THE PEACE, AGAINST PETITIONER SHIEH AND HIS FAMILY MEMBERS IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA.

A. The Pre-filing/Pre-denial Orders Issued By the Trial Court And the Court of Appeal Are Dangerous And Constitute Cruel And Unusual Lifelong Punishment

The worst consequence of the mistaken declaration of Petitioner Shieh as a vexatious litigant and the pre-filing/pre-denial order is: Defendants are exempt from justice for their assault, battery and breaches of the peace, against Shieh and his family members.

1. In Fulbright & Jaworski v. Shieh, BC 041515 ("FJ case") Hollingsworth v. Shieh, 93 K29255 ("Hollingsworth case"), Castellano v. Shieh, 93 K29256 ("Castellano Municipal"), Luu v. Shieh, 93 K29257 ("Luu case") default judgments were

automatically entered without service of summons and complaint and without notice. Shieh was deprived of his rights to defend.

2. When Petitioner Shieh's lawyer filed appeals and filed cross-complaints along with a request for pre-filing permission in the Hollingsworth, Castellano Municipal and Luu cases, they were automatically denied[3].

3. Petitioner Shieh and his family members were subject to two outrageous and dangerous assaults and breaches of the peace in May and June, 1993. The policeman were called immediately to rescue Shieh and his

[3] In the Castellano v. Shieh, 93 K29256, the cross-complaint was automatically dismissed without notice and hearing, even though plaintiffs' lawyer had filed the request for pre-filing permission.

family members at approximately 9:00 p.m. in both incidents. The California lawyers, Peter Mason, David Eisen and D. Jay Ritt, Defendants in this Action, are free from justice because of this pre-denial order.

4. Petitioner Shieh who is not a criminal or suspect, will be subject to beating as in the "Rodney King" case. The wrongdoers will be free from justice. Petitioner Shieh will be subject to criminal attacks, and the criminals will again be free from justice because of this pre-denial order.

Unfortunately, Justice Spencer of the Court of Appeal has intentionally protected all of Defendants' criminal activities so that Caucasian criminal actions are not known to the public.

The life, health, safety and liberty of Petitioner Shieh are in great and immediate danger and this irreparable injury is serious, great and immediate.

B. The Fundamental Rights Protected Under Both the U.S. Constitution and the California State Constitution Have Been Arbitrarily Infringed upon and Deprived Without Due Process.[4]

[4] The U.S. Constitution guarantees even a criminal fugitive the "due process" protection and the right to a fair trial. The U.S. Constitution guarantees a criminal prisoner the fundamental human rights and prohibits the "unusual and cruel punishment". Under the §391 statute, however, once a person has been mistakenly declared to be a vexatious litigant, he will be permanently excluded from access to judicial remedies.

To sum up the above, §391.7 is in fact operating to impose a life-term sentence upon a person who has once been mistakenly declared to be a vexatious litigant, and there is no statutory relief for him to be bailed out. Once a person has been mistakenly declared to be a vexatious

The 1990 version of CCP § 391 et seq. imposes a significant and unjustified open-ended penalty on the exercise of fundamental rights such as right to counsel, right to access to the court, right to due process, equal protection, freedom of speech, freedom of religion, and other fundamental rights. Pursuant to the provisions of this statute, once a litigant is declared as a vexatious litigant by the court, no matter how wrongfully or correctly, the door to the court is totally shut against him/her forever, the voice of the litigant is totally silenced forever, simply because of the presiding judge's choice to ignore or to

litigant in a particular case, his future property right and life right have also been deprived without due process and fair notice. Such unconstitutional statute shall not be upheld in any courts of the United States.

deny permission for the filing of litigation, appeals and writs. Further, in Petitioner Shieh's case, the requests for permission from the presiding judge to file any litigation, appeals and writs were completely ignored. This in turn increases the degree of difficulty for such litigant to retain a lawyer to represent him. Thus the effect of imposing a pre-denial order upon a litigant who is mistakenly declared as a vexatious litigant is tantamount to totally ignoring the fundamental rights of this litigant.

In effect, the Court of Appeal and the Superior Court have declared that all of Shieh's lawyers' complaints, appeals and writs will be automatically dismissed no matter how meritorious the case may be[5].

[5] In the instant case, Petitioner

As Justice Vaino Spencer has admitted that "Pulliam v. Allen (1984 466 U.S. 522, 104 S. Ct. 1970) stands for the proposition that unconstitutional state court administrative practices are subject to federal court injunctions". In the instant case, the conduct of Justice, and the judgment of the Court of Appeal are the same as the facts in Pulliam, and are certainly judicial administrative matters. Furthermore, 42 U.S.C. § 1983 is exactly such a

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Shieh's fundamental rights such as right to counsel, right to access to the court, right to due process, equal protection, freedom of speech, freedom of religion, and other fundamental rights have been swept away by the trial court's wrongful declaration of him as a vexatious litigant. This is aggravated by the Court's requirements that he post a bond of $ 1.05 million for in propria persona defendants. Such an undertaking and administration of law is inconsistent with the fundamental rights secured by our constitution.

Congressional Act which authorizes the federal courts to enjoin a state court's unconstitutional judgment. Pulliam, supra. Therefore, Petitioner is very confident that the conduct of Justice, the judgment of the Court of Appeal should be declared as unconstitutional and should be subject to injunction.

III. PRE-FILING/PRE-DENIAL ORDER IS UNCONSTITUTIONAL

A. Fundamental Right To Access To The Court

To the extent that the restraining order lasts forever, it sounds like a death penalty and even much worse than a life imprisonment in this respect, because, even a sentenced criminal is entitled to certain relief remedies such as parole, probation, conditional

release, rehabilitation, pardon, etc.

The right of potential litigants to use of judicial procedures is constitutionally protected by prohibitions against state deprivation of property without due process of law. A potential litigant is protected by the constitutional right of access to courts for all persons.

The pre-filing order has no boundaries as imposed by the lower courts in the present case. In David Moy v. United States (1990) 906 F.2d at 476, U.S. Court of Appeals for Ninth Circuit states: "The court order requiring litigant to obtain court approval prior to filing of any complaint was overly broad; the requirement should have been imposed only on subjects covered by litigant's prior frivolous pleadings ...

We cannot predict what harm might come to him as a result, and he should not be forced to predict it either. What he does know is that a Sword of Damocles hangs over his hopes for federal access for the foreseeable future."

Under federal law, the pre-filing order must be narrowly tailored to prevent infringement on the litigator's right of access to the courts. Steven M. De Long v. Michael Hennessey (1990) 912 F.2d 1144; 1990 US App. Lexis 15253. If restrictive orders are used too freely or couched in overly broad terms, injunctions against future litigation may block free access to the courts. Michael R. Wood v. Santa Barbara Chamber of Commerce 705 F.2d at 1525.

B. The Trial court and the Court of Appeal Can Not Apply the Pre-filing/pre-

denial Order retroactively to A Litigant's Attorney To Enable It To Circumvent Existing Law.

The pre-filing/pre-denial order shall not retroactively apply to a litigant's attorney. These two new lawsuits were filed, on or about March 4, 1993, and March 30, 1993, respectively, before Division One's Published Decision on or about August 12, 1993. The subsequent, and non-final declaration and the pre-filing order are not retroactive[6]. Thus, these two lawsuits should not be subject to the pre-filing order. Most significantly, trial courts and Division One did not specifically state that their decisions were retroactive.

[6] Code of Civil Procedure §3. See also, Russell v. Superior Court (1986) 185 Cal.App.3d 810, 230 Cal.Rptr. 102, Kizer v. Hanna (1989) 48 Cal.3d 1. 767 P. Id 679.

C. Separation of Power

The rulings and orders rendered by the trial court and Court of Appeal clearly violate the basic doctrine of separation of powers in the U.S. and California Constitutions since the Order is beyond the boundary of judicial power and encroaches upon the legislature.

"The leading Framers of our Constitution view the principle of separation of powers as the central guarantee of a just government." Thomas Freytag, et al., v. Commissioner of Internal Revenue (1991) 111 S.Ct. 2631, 115 L.Ed.2d 764. The doctrine of separation of powers requires the court exercise its discretion to interpret and execute the existing and constitutional laws but not to make or rewrite the laws

and constitution. "Statutes should be construed to avoid constitutional questions, but this interpretative canon is not a license for the judiciary to rewrite language enacted by the legislature." United States, v. James Vincent Albertini (1985) 472 U.S. 675, 105 S.Ct. 2897.

If the lower court is allowed to rewrite the "unambiguous statute" according its own will, no matter what reason or what justification it might have, the very danger of "one Branch's aggrandizing its power at the expense of another Branch", which our constitutional separation-of-powers jurisprudence greatly focused on, would happen. Thomas Freytag, et al., v. Commissioner of Internal Revenue. (1991) 111 S.Ct. 2631. Even if the vexatious litigant statute does not

foresee the alleged "ineffective" results, it is the job of Congress to rewrite the statutes. Otherwise, not only the doctrine of separation of powers will be encroached upon badly, but also the fundamental rights of all litigants and attorneys in this State will be unduly deprived without due process. "The fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do, nor is the judiciary licensed to attempt to soften the clear import to Congress' chosen words whenever a court believes those words lead to a harsh result." United States, et al., v. Madison D. Locke et al. (1985) 471 U.S. 84, 105 S.Ct. 1785.

D. Petitioners Have A Reasonable Probability To Succeed. There Are At Least Eighty-Six (86) Causes of Action Against Defendants in the Within Actions.

As demonstrated in Petitioners' First Amended Complaint ("FAC"), there are at least eighty-six (86) causes of action against Defendants, in the within Actions[7]. The Motion to Vacate

[7] The causes of action included but not limited to the following: breach of contract; tortious breach of the covenant of good faith and fair dealing; accounting; defamation; fraud and deceit; injunction; discrimination--42 U.S.C. § 1981, 42 U.S.C. § 1985(2) and California Civil Code § 52.1; intentional interference with economic relations; conspiracy to interfere with economic relations; conversion; intentional infliction of emotional distress; declaratory relief; quantum meruit; breach of oral contract; nonpayment of wages; waiting time penalties under Labor Code § 203; breach of implied contract of continued employment; wrongful termination in violation of public policy; employment discrimination; age discrimination; violation of civil rights - Civil Code § 52.1; discrimination - 42 U.S.C. 1981 and Civil Rights Act of 1991;

Dismissal along with 25 volumes of written evidence demonstrates that Petitioner has a reasonable probability to succeed on at least one of 86 cases of action. Division Five should not close their eyes, forget their ethical duty and dismiss this case.

IV. WHETHER THE MORE THAN $1.05 MILLION SECURITY FOR IN PROPRIA PERSONA DEFENDANTS ALLEGED IN PROPRIA PERSONA ATTORNEY FEES VIOLATE THE CONSTITUTION

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false description of services - 15 U.S.C. 1125 (A); invasion of right to privacy; unfair competition -B&P § 17200, ET SEQ.; misrepresentation preventing employment - Labor Code § 1050; trespass to chattel; abuse of process; trespass; inducing breach of professional duty; violation of the Uniform Trade Secrets Act; intentional interference with advantageous economic relationship; conspiracy to induce breach of fiduciary and professional duty; conspiracy to violate B&P Code § 6128; negligent infliction of emotional distress; manipulation of judicial system; inducing judges and judicial personnel to breach their judicial duty; interference with partnership opportunity; et al.

AND LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA

A. The In Propria Persona Party Is Not Entitled To Attorneys' Fee.

On or about February 18, 1993, in Ebershoff case, Judge Krieger of the Los Angles Superior Court mistakenly declared Petitioner Shieh a vexatious litigant and requested Petitioner Shieh to post more than $ 1.05 million security to secure the in propria persona Defendants' alleged in propria persona attorney's fees. An in pro per defendant has no right to attorneys' fees CCP § 1033.5(a)(10). See also Kay v. Ehrler, 111 S.Ct. 1435, 499 U.S. 432, 113 L.Ed.2d. 486 (1991) ("A pro se litigant who is also a lawyer may not be awarded attorney's fee under § 1988")

B. CCP § 391 Is Unconstitutional As It Failed To Set Up the Maximum Security of $ 50,000.00 In Accordance With the California Corporations Code § 800 (d).

CCP §391 (Vexatious Litigant Statute) was based on the theory of §834 (now §800) of the Corporation Code[8].

[8] Corporation Code §834 was first adopted in California in 1947. The purpose of this section is to detain the shareholders from launching the derivative "strike lawsuits" against the corporation.

The pertinent part of the §834 (now §800) is as follows:

s. 800. Conditions; Security; Motion for Order; Determination

...

(c) In any action referred to in subdivision (b), at any time *within 30 days* (emphasis added) after service of summons upon the corporation or upon any defendant who is an officer or director of the corporation, or held such office at the time of the acts complained of, the corporation or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) That there is no reasonable

possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its shareholders.

(2) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

The court on application of the corporation or any defendant may, for good cause shown, extend the 30-day period for an additional period or periods not exceeding 60 days.

(d) At the hearing upon any motion pursuant to subdivision (c), the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material (1) to the grounds upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the corporation and the moving party which will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars ($50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be incurred by the moving party and the corporation in connection with the action, including expenses for which the corporation may become liable pursuant to Section 317. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon the motion,

CCP § 391.1 failed to set up the maximum security of $ 50,000.00 in accordance with the California Corporations Code § 800 (d). Consequently, the trial court's $ 1.05 million security for in propria persona Defendants' alleged in propria persona attorney fees is unconstitutional and illegal. Consequently, it deprived the litigant's fundamental rights such as right to access to the court, right to counsel, right to sue, right to jury trial, right of due process, right of equal protection, and freedom of speech, et al.

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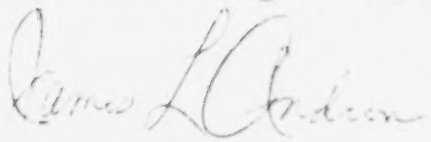
makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court." (emphasis added)

CONCLUSION

For all the foregoing reasons, Petitioner respectfully urge that this petition for certiorari be granted.

Dated: December 9, 1993

Respectfully submitted,



/James L. Andion
Attorney for Petitioners

/C: \lindquis\peti-cer.doc/jm

APPENDIX A

Supreme Court
FILED on September 15, 1993
Robert Wandruff Clerk
(Stamp)

Fourth Appellate District,
Division Three, No. G014639
S034597

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

SAY & SAY Et Al.,

Petitioners

v.

ORANGE COUNTY SUPERIOR COURT,

Respondent

ERIC LINDQUIST, Real Party In Interest

Petition for review DENIED.

Arabian

_____

Acting Chief Justice

Supreme Court
FILED on September 15, 1993
Robert Wandruff Clerk
(Stamp)

Fourth Appellate District,
Division Three, No. G014561
S034284

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

SAY & SAY Et Al.,

Petitioners

v.

ORANGE COUNTY SUPERIOR COURT,

Respondent

JESSEE D. MILLER Et Al.,

Real Party In Interest

Petition for review DENIED.

Arabian

_____
Acting
Chief Justice

APPENDIX B

Court of Appeal-4th Dist. DIV.3

FILED in July 22, 1993

Deputy Clerk

(Stamp)

IN THE COURT OF APPEAL OF

THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SAY & SAY, et al., Petitioners,	) O R D E R
v.	) G014561) (Super. Ct.) No. 70 75 71)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Respondent;	)
JESSE D. MILLER et al., Real Parties in Interest.	)

THE COURT:*

The petition for a writ of mandate/prohibition and request for immediate stay are DENIED as petitioner

has failed to provide an adequate record for review.

SILLS, P. J.

SILLS, Presiding Justice

* Before Sills, P.J., Crosby, J., and Moore, J.

THE ENCLOSED INFORMATION REGARDING CASE NUMBER G014561 HAS BEEN SENT TO THE FOLLOWING:

Andion, James L.
301 North Lake Avenue
Suite 720 A
Pasadena, CA. 91101

Quin, Kully & Morrow
Eisen, David S.
520 South Grand Avenue
8th Floor
Los Angeles, CA. 90071

Attn: Honorable Donald E. Smallwood

Superior Court, Orange County

County Clerk

700 Civic Center Dr. West

Santa Ana, CA. 92701

Office of the Counlty Clerk

Orange County

700 Civic Cntr Dr. West

Santa Ana, CA. 92701

If applicable:

Appellate Defender, Inc., San Diego

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ORANGE

Dept. 1

Court convened at -- M July 14, 1993, present Hon. DONALD E. SMALLWOOD JUDGE: M. Apodaca, Deputy Clerk; none. Bailiff: none, Reporter; and the following proceedings were had:

70 79 71 SAY & SAY VS MILLER

No appearances. Due to inadvertence, the minute order of July 7, 1993 in Department 1 does not properly reflect the order of the Court. Said minute order of July 7, 1993 in Department 1 is hereby corrected,/ nunc pro tunc, to read, " Case is ordered dismissed pursuant to C.C.P. 391.7". The wording "for lack of prosecution" is ordered vacated. Clerk to give notice. ENTERED: 7-14-93.

Guy Rollins and James L. Andion

301 N. Lake Ave., #720C & 720D

Pasadena, CA. 91101

D. Jay Ritt

520 South Grand Avenue

Eighth Floor

Los Angeles, CA. 90071

CLERK'S CERTIFICATE OF MAILING (CCP 1013a) - I CERTIFY I AM NOT PARTY TO THIS CAUSE, OVER AGE 18, AND A COPY OF THIS DOCUMENT WAS MAILED FIRST CLASS POSTAGE PREPAID IN A SEALED ENVELOPE ADDRESSED AS SHOWN ABOVE. MAILING AND EXECUTION OF THIS CERTIFICATE OCCURRED ON 7-14-93 AT SANTA ANA, CALIFORNIA.

GARY L. GRANVILLE, CLERK BY M. Apodaca DEPUTY

MINUTE ORDER

APPENDIX D

Court of Appeal-4th Dist. Div.3

FILED on September 17, 1993

Deputy Clerk

(Stamp)

IN THE COURT OF APPEAL OF

THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SAY & SAY, et al., Petitioners, and Appellants,	) O R D E R)
v.	) G014639) (Super. Ct.) No. 70 64 38)
ERIC LINDQUIST et al., Defendants and Respondents.	)

THE COURT:*

The appeal is dismiss pursuant to Code of CLivil PLrocedure section 391.7, subdivision (c).

H. MOORE, J.

MOORE, Acting Presiding Justice

* Before Moore, Acting P.J., Sonenshine, J., and Crosby, J.

APPENDIX E

Court of Appeal-4th Dist. Div.3

(FILED in August 12, 1993)

Deputy Clerk

(Stamp)

IN THE COURT OF APPEAL OF

THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SAY & SAY, et al., Petitioners,	) O R D E R
v.	) G014639) (Super. Ct.) No. 70 64 38)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Respondent;	)
ERIC LINDQUIST et al., Real Parties in Interest.	)

THE COURT:*

The petition for a writ of

mandate/prohibition and request for immediate stay are DENIED. It appears petitioners have an adequate remedy at law from the order of dismissal. It also appears petitioners have failed to provide this court with an adequate record for review. (Cal. Rules of Court, rule 56(c).)

SILLS, P. J.

SILLS, Presiding Justice

* Before Sills, P.J., Crosby, J., and Moore, J.

THE ENCLOSED INFORMATION REGARDING CASE NUMBER G014561 HAS BEEN SENT TO THE FOLLOWING:

Andion, James L.
301 North Lake Avenue
Suite 720 A

Pasadena, CA. 91101

Quin, Kully & Morrow

Eisen, David S.

520 South Grand Avenue

8th Floor

Los Angeles, CA. 90071

Attn: Honorable Dennis S. Choate

Civil Division, Superior Court

700 Civic Center Dr West

Santa Ana, CA 92701

Office of the Counlty Clerk

Orange County

700 Civic Cntr Dr. West

Santa Ana, CA. 92701

If applicable:
Appellate Defender, Inc., San Diego

APPENDIX F

QUINN, KULLY AND MORROW

A PROFESSIONASL LAW CORPORATION

JOHN J. QUINN (State Bar No. 029588)

DAVID S. EISEN (State Bar No. 100263)

D. JAY RITT (State Bar No. 138661)

520 South Grand Avenue

Eighth Floor

Los Angeles, California 90071

Telephone: (213) 622-0300

Attorneys for Specially Appearing

Defendants

Robert Toms and Eric Lindquist

SUPERIOR COURT OF

THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

SAY & SAY, a California corpopration, L. SHIEH, an individual, Plaintiffs,	) CASE NO. 706438)) ORDER DISMISSING) THE COMPLAINT IN) THIS ACTION

vs.	DATE: July 21, 1993
ERIC LINDQUIST, et al. Defendants.	TIME: 8:30 a.m. DEPT: 26 DISCOVERY Cut-off:None set Motion Cut-off: None set Trial Date: None set

On July 21, 1993, the Order to Show Cause Re: Dismissal of the complaint in this action came on regularly for hearing. Plaintiffs Say & Say, Inc. and L. Shieh were represented by James L. Andion. Defendants Robert Toms and Eric Lindquist were represented by David S. Eisen of Quinn, Kully and Morrow, appearing specially. Defendants Roy Brisbois, Christopher Bisgaard, Richard Zevnik and Barry Kaiman were represented by Richard Zevnik of Lewis, D'Amato, Brisbois & Bisgaard, appearing

specially.

Having considered all pleadings submitted in connection with this matter and the argument of counsel, the Court finds that:

(1) Plaintiff L. Shieh has been declared a vexatous litigant and is prohibited from filing a new lawsuit without the advance permission of the presiding judge;

(2) Plaintiff L. Shieh failed to obtain the advance permission of the presiding judge; and

(3) Listing "Say & Say, Inc." as a co-plaintiff in the complaint did not relieve L. Shieh of the obligation to obtain permission of the presiding judge prior to filing a new complaint.

Accordingly, the court orders the complaint dismissed pursuant to Section 391.7 of the Code of Civil Procedure.

DATED: ____ _____

JUDGE OF THE SUPERIOR COURT

Submitted by:

QUINN, KULLY AND MORROW

A PROFESSIONAL LAW CORPORATION

JOHN J. QUINN

DAVID S. EISEN

D. JAY RITT

By: David S. Eisen

David S. Eisen

Attorneys for Defendant

Fulbright & Jaworski

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; My business address is: 520 South Grand Avenue, Eighth Floor, Los Angeles, California 90071.

On July 22, 1993, I served the foregoing document described as [PROPOSED] ORDER DISMISSING THE COMPLAINT IN THIS ACTION on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

__X__ (BY MAIL) I caused such envelope to be deposited in the mail at Los Angeles, California.

I am "readily familiar" with firm's

practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service oin that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on July 22, 1993, at Los Angeles, California.

__X__ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Hermie Cox Hermie Cox

(Signature)

SERVICE LIST

Guy Rollins, Esq.
301 N. Lake Avenue
Suite 720 C
Pasadena, CA 91101

James L. Andion, Esq.
301 N. Lake Avenue
Suite 720 D
Pasadena, CA 91101